IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8540 of 2003

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LIFE INSURANCE CORPORATION OF INDIA - Petitioner(s)

Versus

SURESHCHANDRA NAGINBHIA TAILOR - Respondent(s)

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Appearance :

MR AK CLERK for Petitioner(s) : 1,
MR DIPEN C SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 20/01/2006

ORAL JUDGMENT

1. This petition is directed against the award dated 31.3.2003 passed by the Central Government Industrial Tribunal-II, Vadodara (hereinafter referred to as the

Tribunal) in Reference (ITC) No.5 of 2001, whereby the petitioner was directed to reinstate the respondent in service with 75% back wages.

2. The short facts of the case are that the respondent was working as a typist with the petitioner since the year 1990. He was served with a chargesheet dated 6.4.1998 alleging that he had tampered with the school leaving certificate and committed fraud and obtained employment in the petitioner corporation. After conducting a departmental inquiry his services came to be dismissed. The respondent filed an appeal before the Appellate Authority which came to be dismissed. The respondent, therefore raised a dispute which was referred to the Tribunal, which passed the award in question.

3. Mr. Clerk for the petitioner submitted that the respondent has tampered with the school leaving certificate for the purpose of obtaining employment and therefore he is not entitled for reinstatement. Mr. Clerk submitted that specific contention was raised in the written statement and it is stated that the provisions of the Industrial Dispute Act do not apply, as in this case they are covered by the Rules under section 48 of the LIC

Act. Therefore it was submitted that no industrial dispute can be raised in the matter. He submitted this contention was not considered by the Labour Court.

4. Mr. Clerk has relied upon a decision in the case of M. Venugopal V. Divnl. Manager, LIC of India, Machilipatnam, reported in AIR 1994 SC 1343. Paragraphs 13 and 14 of the said decision reads as under:

> “13. Such employees earlier used to be governed by the regulations framed by the corporation under S.49 of the Corporation Act as well as by the provisions of the Industrial Disputes Act, being “workman” within the meaning of what Act. It was up to them to enforce the rights or remedies in terms of the regulation so framed under the Corporation Act or in accordance with the provisions of the Industrial Disputes Act. Both after the amendment introduced by the Parliament in S.48, the employees of the Corporation shall not be entitled to protections to which they were entitled before the coming into force of the amendment aforesaid. The amendments cannot be held to be violative of Art.14 of the Constitution, merely on the ground that a section of the employees of the Corporation had the benefit of protection of the provisions of the Industrial Disputes Act, which now they have been deprived. The wisdom of the legislature in extending the protection of the provisions of the Industrial Disputes Act or denying the same cannot be judged by the courts, unless any such step is held to be violative of any of the provisions of the Constitution. This Court has considered the validity of the aforesaid Life Insurance Corporation (Amendment) Act, 1981 in the case of A.V. Nachane V. Union of India (1982)2 SCR 246: (AIR 1982 SC 1126), and it has been held that

the said Amending Act shall operate but prospectively in so far it seeks to nullify the terms of 1974 settlement in regard to payment of bonus in that case. It was said in the said case that S.48(2-C) read with S.48(2)(oo) authorities the Central Government to make rules to carry out the purposes of the Act notwithstanding the Industrial Disputes Act or any other law, which meant that in respect of the matters covered by the rules, the provisions of the Industrial Disputes Act or any other law will not be operating. It was pointed out that it was not really the rules framed by the Central Government that override the Industrial Disputes act or any existing law, but the power of abrogating the existing laws was in sub-sec.(2-C) of S.48, enacted by Parliament itself and as such there was no question of an excessive delegation. The grievance that by excluding the employees of the Corporation from the purview of the Industrial Disputes Act amounted to discrimination against them and as such the provisions of the Amending Act were violative of Art.14 of the Constitution, was also rejected.

14. The amendments introduced in S.48 of the Corporation Act have clearly excluded the provisions of the Industrial Disputes act, so far they are in conflict with the rules framed under S.48(2)(oo). The result whereof will be that termination of the service of the appellant shall not be deemed to be a retrenchment within the meaning of S.2(oo), even if sub-sec.(bb) had not been introduced in the said section. Once S.2(oo) is not attracted there is no question of application of S.25-F on basis of which the termination of the service of the appellant can be held to be invalid. The termination of the service of the appellant during the period of probation is in terms of the order of appointment read with Regulation 14 of the Regulations, which shall be deemed to be now Rules u/s.48(2)(oo) of the Corporation Act.”

Mr. Clerk has also relied upon a decision in the case of Life insurance Corporation of India V. Santosh Kumar Sharma, reported in 2004 LAB I.C. 3396 wherein the award passed by the Tribunal

was set aside since the preliminary issue regarding jurisdiction is not decided.

5. Mr. Shah for the respondent has submitted that the Tribunal has considered all the facts and circumstances and rightly come to the conclusion that the services of the respondent were terminated illegally. He has relied upon a decision of the Supreme Court in the case of A.N. Nachane V. Union of India, reported in AIR 1982 SC 1126. Paragraphs 9 and 10 read as under:

> 9. It was contended that sub-sec. (2C) added of S. 48 of the Life Insurance Corporation Act, 1956 by the Amendment Act of 1981 was invalid because of excessive delegation of legislative functions and that if sub-sec. (2C) which is an integral part of the Amendment Act was ultra vires, the entire Amendment Act would be unconstitutional. The Amendment Act introduced cl. (cc) in S. 48 (2) authorising the Central Government to make rules in respect of the terms and conditions of service of the employees and agents of the Corporation. Sub-section (2C) of S. 48 provides inter alia that rules made under cl. (cc) shall have effect notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law for the time being in force. The argument is that the rules made under S. 48(2) (cc) can virtually repeal the Industrial Disputes Act and other laws to the extent they are inconsistent with these rules. Repealing a law, it was submitted on the authority of In re Delhi Laws Act 1951 SCR 747 : (AIR 1951 SC 332), was an essential legislative function which had been delegated to the Central Government and that the delegation was therefore excessive. It is now well settled that it is competent for the legislature to delegate to other authorities the power to frame rules to carry out the purposes of the law made by it

(see In re the Delhi Laws Act, Raj Narain Singh V. The Chairman, Patna Administration Committee, Patna (1955) 1 SCR 290 : (AIR 1954 SC 569), and D.S. Garewal v. State of Punjab (1959) Supp (1) SCR 792 : (AIR 1959 SC 512)) but the essential legislative functions cannot be delegated. What is essential legislative function has been explained by Mukerjee, J., in the Delhi Laws case (AIR 1951 SC 332 at p. 400) as follows:

> "The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of that policy."

In Raj Narain Singh v. Chairman, Patna Administration Committee, Patna, a Bench of five Judges of this court held that an executive authority can be empowered by a statute to modify either existing or future laws but not in any essential feature. In the instant case S. 48 (2C) read with S. 48(2) (cc) authorises the Central Government to make rules to carry out the purposes of the Act notwithstanding the Industrial Disputes Act or any other law. This means that in respect of the matters covered by the rules the provisions of the Industrial Disputes Act or any other law will not be operative. The argument is that sub-sec. (2C) or any other provision introduced in the principal Act by the Amendment Act does not lay down any legislative policy nor supply any guidelines as to the extent to which the rule-making authority would be competent to override the provisions of the Industrial Disputes Act or other laws. Reference was made to Municipal Corporation of Delhi v. Birla Cotton Spinning and Weaving Mills, Delhi (1968) 3 SCR 251 : (AIR 1968 SC 1232) and Gwalior Rayon Silk Manufacturing (Weaving) Company Limited v. Assistant Commissioner of Sales Tax (1974) 2 SCR 879 : (AIR 1974 SC 1660) for the proposition that

unlimited right of delegation is not inherent in the legislative prower itself.

10. The question therefore is, does the Amendment Act of 1981 lay down no legislative policy or furnish no guidance to indicate the nature and extent of the modifications that the rules will be permitted to make in the existing laws to carry out the purposes of the Life Insurance Corporation Act, 1956as amended in 1981? Learned Attorney General relied on the decision of this court in Harishankar Bagla v. State of Madh Pra (1955) 1 SCR 380 : (AIR 1954 SC 465). This was a case under the Essential Supplies (Temporary Powers) Act, 1946. S. 3 (1) of that Act says that the Central Government for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-sec. (2) of S. 3 states that without prejudice to the generality of the powers conferred by sub-sec. (1), such an order may provide inter alia for regulating by licences or permits or otherwise the production or manufacture and transport, distribution, disposal, acquisition, use or consumption of any essential commodity, S. 6 of the Act provides inter alia that any order made under S. 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than that Act. In exercise of the powers conferred by S. 3 of the Act the Central Government made the Cotton Textiles (Control of Movement) Order, 1948. cl. 3 of the said Order requires a person to take a permit from the Textile Commissioner to enable him to transport cotton textiles. One of the questions that arose in Harishanker Bagla's case (AIR 1954 SC 465) was whether S. 6 of the Essential Supplies (Temporary Powers) Act permitted rules to be made by the Central Government repealing by implication an existing law, which was an essential legislative function and could not validly be delegated. Mahajan, C. J., speaking for the court said (at p. 469) :

“Section 6 does not either expressly or by

> implication repeal any of the provisions of pre-existing laws neither does it abrogate them. Those laws remain untouched and unaffected so far as the statute book is concerned . The repeal of a statute means as if the repealed statute was never on the statute book. It is wiped out from the statute book. The effect of S. 6 certainly is not to repeal any one of those laws or abrogate them. Its object is simply to by-pass them where they are inconsistent with the provisions of the Essential Supplies (Temporary Powers) Act, 1946, or the orders made thereunder. In other words, the orders made under S. 3 would be operative in regard to, the essential commodity covered by the Textile Control Order wherever there is repugnancy in this Order with the existing laws and to that extent the existing laws with regard to those commodities will not operate. By-passing a certain law does not necessarily amount to repeal or abrogation of that law. That law remains unrepealed but during the continuance of the Order made under S 3 it does not operate in that field for the time being."

We think the Attorney General was right in his submission that what has been said of S. 6 of the Essential Supplies (Temporary Powers) Act should hold good for sub-sec. (2C) of S. 48 of the Life Insurance Corporation Act which is similar in terms in so far as it authorises the Central Government to make rules by-passing the existing laws. Mahajan, C.J., also holds that assuming that the rules framed under the Act had the effect of repealing the existing laws, the power to repeal is exercised not by the delegate but by the Act itself. This is what he says on those points (at p. 469):-

> "Conceding, however, for the sake of argument that to the extent of a repugnancy between an order made under Section 3 and the provision of an existing law, to the extent of the repugnancy, the existing law stands repealed by implication, it seems to us that the repeal is not by any Act of the delegate, but the repeal is by the

> legislative Act of the Parliament itself. By enacting S. 6 Parliament itself has declared that an order made under S. 3 shall have effect notwithstanding any inconsistency in this order with any enactment other than this Act. This is not a declaration made by the delegate but the Legislative itself has declared its will that way in S. 6. The abrogation or the implied repeal is by force of the legislative declaration contained in S. 6 and is not by force of the order made by the delegate under S. 3. The power of the delegation is only to make an order under S. 3. Once the delegate has made that order its power is exhausted. S. 6 then steps in wherein the Parliament has declared that as soon as such an order comes into being that will have effect notwithstanding any inconsistency therewith contained in any enactment other than this Act. Parliament being supreme, it certainly could make a law abrogating or repealing by implication provisions of any pre-existing law and no exception could be taken on the ground of excessive delegation to the Act of the parliament itself."

The Attorney General relief strongly on these observations in submitting that it is not really the rules framed by the Central Government in exercise of the delegated authority that override the Industrial Disputes Act or any other existing law but the power of abrogating the existing laws is in sub-sec. (2C) of S. 48 enacted by Parliament itself. The observations quoted above from Harishanker Bagla's case which was decided by a bench of five Judges appear to support the Attorney General's contention.

6. As a result of hearing and perusal of the record, I am of the view that the contention raised by the petitioner is required to be accepted. In the written Statement the petitioner had stated as under:

"The provisions of the Industrial dispute Act do not apply, as in this case they are covered by the Rules U/S. 48 of the LIC Act. Hence, no Industrial Dispute can be raised in this matter.

The Corporation submits that the Act was amended in the year 1981 by the Life Insurance Corporation (Amendment) Act, 1981 (hereinafter referred to as "the Amendment Act). As a consequence of the Amendment act, among others, the said Amendment Act stands incorporated in the L.I.C. Of India Act. As such, the rules made U/s 48 by the Central Government hold good. To that extent, the applicability of industrial Dispute Act is excluded.

The power of the Corporation to make regulations under Section 49 providing for the terms and conditions of service of its employees came to be abrogated.

The (staff) Regulations and provisions relating tot he terms and conditions of service of the employees of the Corporation shall be deemed to be rules made by the Central Government under section 48(2)(cc) of the Act.

And any rule made under Clause (cc) of Sub-section (2) of Section 48 of the Act shall have effect notwithstanding any judgement, decree or order of any court, Tribunal or other authority and notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law or any agreement, settlement, award or other instrument for the time being in force.

The Corporation submits that the (Staff) Regulations are, therefore, deemed to be rules made by the Central Government under section 48(2)(cc) of the Act and hence, statutory and they shall effect notwithstanding anything contained in, among others, the Industrial Dispute Act, 1947.

Regulation 39(1) provides that without

prejudice to the provision of the other regulations, any employees who commits a breach of the regulations, or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation or conflicting with the instructions or who commits a breach of discipline or is guiltily of any other act prejudicial to god conduct may be awarded any one or more of the penalties mentioned in Clause (a) to (g) of the said Sub-regulations.

Sub-regulation (2) of the said Regulation 39 provides that no order imposing any of the penalties specified in Clauses (b) to (g) shall be passed by the Disciplinary Authority without the charge or charges being communicated to the employee in writing and without his having been given a reasonable opportunity of defending himself against such charge or charges and of showing cause against the action proposed to be taken against him. In this case, procedure as laid down in the (Staff) Regulations has been properly followed and the Second Party was provided with reasonable opportunity to conduct his defence. Further, the findings of the guilt are based on the evidence accrued during the course of enquiry proceedings.

The Corporation submits that the penalty mentioned in clause (a) of Regulation 39(1) is “Censure' and since under Sub-Regulation (2) of Regulation 39, it is only when any one or more penalties mentioned in Clause (b) to (g) of Regulation 39(1) are proposed to be imposed on an employee, the inquiry referred to in Sub-Regulation (2) is required to be conducted, it would follow that where the penalty proposed to be imposed on an employee is “Censure' under Clause (a) of Regulation 39(1), no regular disciplinary inquiry need to be conducted. In other words the Corporation humbly submits that in as much as Sub-Regulation (2) of Regulation 39 specifically requires an inquiry to be conducted, in accordance with the principles of Natural Justice mentioned therein only when the penalty proposed to be imposed on an employee is

> other than"Censure", the application of the principles of Natural Justice is statutorily excluded in a case where the penalty proposed to be imposed on an employee is"Censure' under Clause (a) of Regulation 29(1) of the (Staff) Regulations."

7. As a result of hearing it is evident that the contention raised by the petitioner regarding the issue of jurisdiction was not decided by the Tribunal. Since the said issue has not been decided, I am of the view that it would be in the interest of justice to remand the matter to the Tribunal for considering the question of jurisdiction.

8. Accordingly the impugned award is quashed and set aside. The matter is remanded to the Tribunal. The Tribunal shall first decide the question of jurisdiction in view of the contention raised by the petitioner. Ultimately if the Tribunal comes to the conclusion that the Tribunal has jurisdiction, then the Tribunal shall proceed to hear the entire matter on merits. The Tribunal shall hear and decide the matter within a period of six months from the date of receipt of writ of this Court. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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